

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re  
FTX Trading Ltd., et al.,  
*Debtors*.<sup>1</sup>

Chapter 11  
Case No. 22-11068-JTD  
(Jointly Administered)  
Re: 13627  
Objection Deadline:  
May 15, 2024 at 4:00 p.m. (ET)  
Hearing Date:  
May 23, 2024 at 10:00 a.m. (ET)

**MEDIA INTERVENORS' OBJECTIONS TO EXAMINER'S MOTION TO  
AMEND ORDER (I) (A) ESTABLISHING THE SCOPE, COST, DEGREE, AND  
DURATION OF THE EXAMINATION AND (B) GRANTING RELATED  
RELIEF; AND (II) PERMITTING THE FILING OF CERTAIN  
INFORMATION REGARDING POTENTIAL PARTIES IN INTEREST UNDER SEAL**

Media Intervenors Bloomberg L.P., Dow Jones & Company, Inc., The New York Times Company, and The Financial Times Ltd (together "Media Intervenors"), hereby object to the motion of examiner Robert J. Cleary ("Examiner"). D.I. 13627.

**BACKGROUND**

1. On December 19, 2022, the Court granted Media Intervenors' motion to intervene to oppose the redaction and sealing of certain information in court filings in the above-captioned bankruptcy case. D.I. 255. Media Intervenors' appeal of a sealing order entered by the Court is currently pending in the U.S. District Court for the District of Delaware. *See Bloomberg L.P., et al. v. FTX Trading Ltd., et al.*, Civil Action No. 23-682-CFC (D. Del.).

<sup>1</sup> FTX Trading Ltd.'s and Alameda Research LLC's tax identification numbers are 3288 and 4063, respectively. Due to the large number of debtor entities in these Chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

2. On December 1, 2022, the United States Trustee (“U.S. Trustee”) moved this Court for the appointment of an independent examiner pursuant to 11 U.S.C. § 1104(c) (the “Appointment Motion”). D.I. 176.

3. On February 21, 2023, the Court denied the Appointment Motion. D.I. 746. On March 6, 2023, the U.S. Trustee filed a notice of appeal. D.I. 805.

4. On January 18, 2024, the U.S. Court of Appeals for the Third Circuit issued an opinion reversing the Court’s order denying the Appointment Motion. *In re FTX Trading Ltd.*, 91 F.4th 148 (3d Cir. 2024).

5. On March 20, 2024, following a hearing, the Court issued an order approving the appointment of Mr. Cleary as an independent examiner. D.I. 9882. The Court also issued an Order (I) (A) Establishing the Scope, Cost, Degree, and Duration of the Examination and (B) Granting related Relief; and (II) Permitting the filing of Certain Information Regarding Potential Parties in Interest Under Seal (the “Examination Scope Order”). D.I. 9883.

6. The Examination Scope Order requires the Examiner to “file a report” (hereinafter, the “Report”) within 60 days. D.I. 9883 ¶¶ 2–5. Accordingly, pursuant to the Examination Scope Order, the Report is due to be filed no later than May 20, 2024.

7. The Examination Scope Order provides: “The Examiner shall cooperate with the Debtors and the Committee to ensure that the Examiner’s [R]eport, as made public through publication by filing with the Court, will not contain confidential or privileged information, including information regarding the Debtors’ operations, prospects or litigation strategies.” D.I. 9883 ¶ 8.

8. The Examination Scope Order further provides that “nothing in this Order is authorizing anything in the Examiner’s [R]eport to be redacted or filed under seal. Any request to redact or seal any portion(s) of the Examiner’s [R]eport shall be sought by motion on notice to all

relevant parties in interest, and the rights of all parties in interest to object to any such motion are expressly reserved.” D.I. 9883 ¶ 8.

9. On May 1, 2024, the Examiner filed a motion to amend the Examination Scope Order (the “Examiner’s Motion”). D.I. 13627.

10. The Examiner’s Motion requests permission for the Examiner to file his Report “under seal” on or before May 20, 2024. D.I. 13627 ¶ 17. It further proposes that the Examiner thereafter provide “copies” of that Report “to the Court, the Debtors, the Committee, and the U.S. Trustee,” and that the “Examiner, the Debtors, the Committee, and the U.S. Trustee” be given “until May 28, 2024, to discuss and finalize redactions to the Report that are necessary to protect privileged information.” D.I. 13627 ¶ 17.

11. The Examiner’s Motion proposes procedures for the submission of a “proposed order sealing redactions” that are agreed to by the Examiner, Debtors, the Committee, and the U.S. Trustee, D.I. 13627 ¶ 17, as well as a process for those parties to “jointly apply to the Court for resolution” if they “cannot agree on the proposed redactions,” accompanied by the filing of a “public version of the [Examiner’s] Report that includes the disputed redactions,” D.I. 13627 ¶ 18.

### **ARGUMENT**

12. Media Intervenors object to the Examiner’s request that he be permitted to file his Report entirely under seal on or before May 20, 2024. Further, even if the Court permits the Examiner to file his Report under seal in its entirety on or before May 20, 2024, the Court should still reject and/or modify the redaction process proposed by the Examiner. Specifically, Media Intervenors object to a process whereby the Examiner, Debtors, the Committee, and the U.S. Trustee would later submit their agreed-upon redactions to the Court for approval in the form of a proposed order—a process that would sidestep the requirement of a noticed motion to seal and

would deprive interested members of the press and public, including Media Intervenors, of an opportunity to object to those redactions.

13. There is a strong presumption in favor of public access to judicial records. *See Nixon v. Warner Commc'n, Inc.*, 435 U.S. 589, 597–98 (1978); *see also* 11 U.S.C. § 107(a) (designating all papers filed in bankruptcy cases to be open public records, except as provided in subsections (b) and (c)). This presumption “is at its zenith when issues concerning the integrity and transparency of bankruptcy court proceedings are involved.” *In re Food Mgmt. Grp., LLC*, 359 B.R. 543, 553 (Bankr. S.D.N.Y. 2007).

14. In requiring the appointment of an examiner in this matter, the Third Circuit expressly noted that the examiner “must make [his] findings public.” *In re FTX Trading Ltd.*, 91 F.4th at 157. Such transparency comports with “Congress’s intent to protect the public’s interest as well as those creditors and debtors directly impacted by the bankruptcy.” *Id.* And such transparency is, as the Third Circuit stated, “particularly appropriate” in the instant case because the

collapse of FTX caused catastrophic losses for its worldwide investors but also raised implications for the evolving and volatile cryptocurrency industry. For example, an investigation into FTX Group’s use of its own cryptocurrency tokens, FTTs, to inflate the value of FTX and Alameda Research could bring this practice under further scrutiny, thereby alerting potential investors to undisclosed credit risks in other cryptocurrency companies. In addition to providing much-needed elucidation, the investigation and examiner’s report ensure that the Bankruptcy Court will have the opportunity to consider the greater public interest when approving the FTX Group’s reorganization plan.

*Id.*

15. The Examiner’s Motion makes no showing that would support sealing any portion—let alone all—of the Examiner’s Report for *any* period of time. And, indeed, there should be nothing in the Examiner’s Report that requires redaction. The Court’s Examination Scope Order expressly ordered the Examiner to work with the Debtors and the Committee to ensure that the

Report does “not contain confidential or privileged information.” D.I. 9883 ¶ 8. In other words, it was (and is) incumbent upon those parties to work together in advance of the May 20, 2024 deadline for the public filing of the Report to ensure it does not include such information. The Examiner’s Motion—which proposes that the Report be filed under seal in its entirety, and that the parties thereafter “agree” on what portions of the Report the public be permitted to see—is inconsistent with the Court’s Examination Scope Order and with governing law. No modification of the Examination Scope Order is warranted, and the Examiner’s Motion should be denied.

16. To the extent the Court is inclined to permit the Examiner to file his Report under seal in the first instance, Media Intervenors respectfully request that the Court require any party urging that redactions be made to the Report before it is made public—whether or not other parties “agree” to those redactions—to publicly file a redacted version of the Report accompanied by a noticed motion to seal the redacted information (not merely a “proposed order”). It is the burden of the party urging sealing of a judicial record in whole or in part to demonstrate that such sealing is necessary. Specifically, the proponent of sealing bears a “heavy burden” to show that “‘the material is the kind of information that courts will protect’ and that ‘disclosure will work a clearly defined and serious injury to the party seeking closure.’” *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) (citation omitted). A noticed motion will give Media Intervenors and any other interested party, including creditors, an opportunity to object to any redactions to the Examiner’s Report that are proposed by the parties.

### CONCLUSION

For the foregoing reasons, Media Intervenors respectfully request that the Court deny the portion of the Examiner’s Motion requesting that he be permitted to file his Report entirely under seal on or before May 20, 2024, or, in the alternative, deny and/or modify the sealing and redaction

procedures proposed by the Examiner's Motion.

Dated: May 14, 2024

Respectfully submitted,

/s/ David L. Finger

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**CERTIFICATE OF SERVICE**

I, David L. Finger, hereby certify that on this 14th day of May, 2024, in accordance with Del. Bankr. Local Rule 9036-1(b), I caused the foregoing Media Intervenor's Objections To The Second Joint Motion Of The Debtors And The Official Committee Of Unsecured Creditors For An Order Authorizing The Movants To Redact Or Withhold Certain Confidential Information Of Customers via CM/ECF upon the below-listed counsel and parties of record:

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